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                          UNITED STATES BANKRUPTCY COURT
10
                          NORTHERN DISTRICT OF CALIFORNIA
11
                                    SAN JOSE DIVISION
12
13
    In re:
                                                CASE NO. 12-58012 ASW
14
    ROSE COURT, LLC,
                                                 Chapter 11
15
       Debtor in Possession.
                                                 DEBTOR'S REPLY TO
16
                                                 U.S. BANK'S OPPOSITION TO
                                                 AMENDED MOTION TO ADJUST
17
                                                 ADEQUATE PROTECTION
                                                 PAYMENTS
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19
                                                 Date: August 28, 2014
                                                 Time: 3:00 p.m.
20
                                                 Place: 280 S. First Street, Courtroom 3020
21
                                                       San Jose, CA 95113
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                                                 Judge: Honorable Arthur S. Weissbrodt
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                     SUMMARY OF OPPOSITION ARGUMENTS
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          Debtor Rose Court, on July 16, 2014, filed its Amended Motion to Adjust the Adequate
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    Protection Payments (the "Motion"). On August 14, 2014, secured creditor U.S. Bank National
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    Association ("US Bank") filed an Opposition to the Motion (the "Opposition"). The Opposition
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    advanced the following points:
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Reply to Opposition to Motion to Adjust Adequate Protection Payments *In re: Rose Court, LLC*

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1	1.	Debtor presents no authority or argument to support the requested adjustment.
2		(Opposition, Page 4:9.)
3	2.	The adequate protection is devised to protect the secured interest of the creditor
4		(Opposition, Page 4:11-12.)
5	3.	Debtor cannot establish any basis for further reduce the APO payments when the
6		loan carries unpaid balance of \$2,487,500 and arrearages totaled \$713,064.79
7		(Opposition, Page 4:16-18.)
8		<u>REPLY</u>
9	1. The Mo	otion Does Present Authority and Argument to Justify the Adjustment
10	Or	March 21, 2013, the Court issued its Adequate Protection Order ("APO"). Debtor's
11	argument can be summarized as follows:	
12	a.	The APO instructs Debtor to make monthly payments, which payments are "the full
13		Note payment for principal and interest in the amount of \$12,437.350."
14	b.	The Note provides that rate will change effective May 1, 2014, and the payment will
15		be principal and interest (as opposed to interest only during the first seven years).
16	c.	On May 1, 2014, the variable rate was changed to 2.557% and, per the note term,
17		rounded to 2.5%. Applying this rate will result in monthly principal & interest
18		payment of \$11,859.92.
19	2. The 03/20/13 Order re Adequate Protection Is Consistent with the Legislative Intent.	
20	In	1978, the Congressional Record for Section 361 of the Bankruptcy Code provided
21	that "Adequate protection of an interest of an entity in property is intended to protect a	
22	creditor's allowed secured claim." 11 U.S.C. § 361 (Cong. Rec. H 11092 (Sept. 28, 1978)).	
23	The regular monthly payment that U.S. Bank would otherwise be entitled to at this point	
24	is exactly what proposed by Debtor in the Motion.	
25	3. The Un	paid Loan Balance and the Arrearage have nothing to do with the subject issue.

Reply to Opposition to Motion to Adjust Adequate Protection Payments

In re: Rose Court, LLC

The Motion aims at the adjustment necessary to reflect the fair and correct

implementation of the APO as applied with the change in market in order to comply with the

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term of the Note. Neither this issue has anything to do with how much the unpaid loan balance is, nor how much the arrearage is. **CONCLUSION** On the foregoing reasons, the Motion for Oder Adjusting Adequate Protection Plan should be granted in its entirety. Date: August 24, 2014 HENSHAW LAW OFFICE /s/ David S. Henshaw David S. Henshaw Attorney for Debtor ROSE COURT, LLC

> Reply to Opposition to Motion to Adjust Adequate Protection Payments In re: Rose Court, LLC